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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1019

MORRIS BERMAN

Appellant,

— VS. —

BOARD OF ELECTIONS OF THE CITY OF NEW YORK, *et al.*

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE, JOHN R. CREWS,* J. J. DUBERSTEIN,** *Commissioners,*

Appellees.

* Resigned 1966
** Term started 1966

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF AS TO JURISDICTION OF THE NATIONAL INFORMATION BUREAU FOR JEWISH LIFE, INC. AS AMICUS CURIAE

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Interest of the National Information Bureau for Jewish Life, Inc.

This brief is filed with the consent of the parties. The National Information Bureau for Jewish Life, incorporated in 1965 under the membership corporation law of the State of New York, is a non-profit, non-partisan organiza-

tion having a nation wide membership including persons of various religious views and sects, predominantly of the Jewish religion and citizens of the State of New York. It is devoted to informing the general public on Jewish ideals and the accomplishments of American Jews in government and the professions. The president of the organization is the director of community relations in a Hebrew institution of learning and is also an editor of the Jewish Press, the editorial of which, in the Appellant's Jurisdictional Statement, advocates the separation of church and state with respect to church voting. The honorary national president is a member of the United States Congress from New York, and the advisory board includes members of Congress and of the judiciary, the latter not being associated with discussions on this brief. Among officers and directors, including the president, are rabbis of doctoral rank who are leaders in American Jewish life. In 1965 the outstanding achievement award of the organization was presented to a legal adviser to the President by the Vice President of the United States. It is in the interest of the *amicus curiae* to preserve Jewish institutions as well as religious freedom granted by the Establishment Clause, now denied its members through compulsory church voting.

It should be clearly understood that in filing this brief the *Amicus Curiae* does not, expressly or by implication, reflect on the principles or practices of any religious organizations, regardless of denomination. The sole concern in this brief is in connection with the informational aspect of the organization in stating the ideals and customs of the Jewish people in showing that the Court has jurisdiction in its function of interpreting the Constitution.

Statement of the Case

The Appellant in this case, assuming the unconstitutionality of Section 66 of the New York State election law, permitting church voting, instituted an action in tort in the state courts for culpable negligence on the part of the New York City board of elections in assigning a church-operated building containing religious symbolism as a polling place for said Appellant in the 1964 state and federal election. The action was started following the refusal of said board to change Appellant's polling place to a secular building, and to cover the religious symbolism during the Appellant's voting when requested to do so. The following year the Appellant was again assigned a church building for registration purposes.

The state supreme court stated in its order it did not, as a court of original jurisdiction, wish to assume the unconstitutionality of the election law, and the state appellate courts rendered no opinions.

POINT I

Section 66 of the State Election Law Violates the Principle of Religious Freedom.

In the Harvard Law Review, Volume 75, 306, Mr. Justice Silberg of the Supreme Court of Israel, in distinguishing religious law from secular law, stated:

> "Jewish law does not confine itself to relations between man and man, but in addition, * * * between man and G—d."

For centuries the admonition against both viewing of strange religious symbolism and, by custom, entry into strange churches, has been law to the religious denomination of the Appellant, which the State has made difficult to observe

if voters are not to be disenfranchised, much as the Soviet Union has made religious observance difficult through withholding of various religious rights and privileges previously enjoyed by its people. Religious freedom is essential for the continuance of religious faith by succeeding generations, and the unhampered continuance of religious custom is essential for such continuance.

That the Court has jurisdiction in this case is confirmed by these cases involving the Establishment Clause: *Abington Township* v. *Schempp*, 374 U.S. 203 (1963); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Engel* v. *Vitale*, 370 U.S. 421 (1962); *Everson* v. *Board of Education*, 330 U.S. 1 (1947); *McCollum* v. *Board of Education*, 333 U.S. 203 (1948) and *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

The establishment of a church in a community by the state for voting by all religious faiths is a serious violation of the Establishment Clause, resulting in proselytising by the state, as distinguished from non-governmental agencies (*Cantwell* v. *Connecticut, supra*). In the case of *Sherbert* v. *Verner* (*supra*) cited by the American Jewish Congress as *amicus curiae* in this case before a state appellate court, Mr. Justice Douglas wrote, in referring to the Establishment Clause:

> "The harm is with the interference with the individual's scruples or conscience—an important area of privacy which the First Amendment fences off from Government."

POINT II

The Determination of Constitutionality is Essential

As the Appellant has stated in his Jurisdiction Statement:

> "This dismissal (of the complaint for insufficiency) is understandable on the court's presumption of constitutionality of the state election law . . ."

Unlike *Peters* v. *Hobby*, 349 U.S. 331 (1955), wherein the constitutional question did not have to be reached, the determination of constitutionality is the essence of the instant case, which is a test case of the constitutionality of a state law. If the law were considered by the Appellant to be constitutional he would not have brought this action. As already indicated, the elements of a sufficient complaint (based upon unconstitutionality) were present, and dismissal of the complaint was in error.

We respectfully submit that the Court has jurisdiction in this case.

Respectfully submitted,

THE NATIONAL INFORMATION BUREAU FOR JEWISH LIFE, INC.,
Amicus Curiae
MASON HAMPTON, JR.
Counsel